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Filed : March 26, 2001

REMARKS

In the Office Action, examiner states that applicant's remarks in response to the rejections of claims 1-4, 6-14, and 16-19, in the previous office action, were fully considered and found to be persuasive. Therefore, such rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Yamada and Netship.

Claims 1, 2, 4, 6-14, and 16-18 were rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100), in view of Netship (PTO-892, Item: U).

Claim 3 was rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100), in view of Netship (PTO-892, Item: U), as applied to Claim 1.

Claim 19 was rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100), in view of Netship (PTO-892, Item: U), as applied to Claim 1, further in view of Official Notice (regarding fulfillment center facilities).

Response to Rejections

By focusing on specific references, claims and limitations in the remarks that follow, Applicant does not intend to imply an agreement with the Examiner's assertions with respect to other references, claims, and limitations.

**As to Independent Claim 1**

Claim 1 recites, "on a computer system, for each of a plurality of consumers, associating a plurality of items ordered by the consumer from a plurality of merchants."

The examiner takes the position that these limitations are disclosed by Yamada (patent number 6,336,100) in reliance upon two excerpts from the following paragraphs in the cited reference:

(paragraph containing col. 2 lines 19-21) - "In FIG. 1, a numeral 1 indicates a server of an online shopping service provider. Provided on the server 1 is a shopping mall 2 with a plurality of virtual stores 2a. The shopping mall 2 and the stores 2a are imaginarily composed in the server 1 by means of a main frame, a program running on the mainframe and peripheral equipment such as an external storage device (not shown)."

(paragraph containing col. 4 lines 60-65) - "According to the invention, although one item (commodity) is shown on the shopping list of FIG. 9, it is easy to make an order of delivery of a plurality of commodities to a plurality of places in STEP S9. In case of change in address, station, etc., the process goes back to STEP S2 or S3."

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In these cited excerpts, Applicant can find no reference or implication disclosing the above recited limitation of Claim 1. A full scan of the cited reference reveals that the word "associate" or any of its derivatives is not present anywhere in said reference.

Association of items ordered from a plurality of merchants is not a necessary condition to practice the art presented by Yamada. What Yamada describes is an online shopping mall with the added improvement of directing the shipment of the ordered goods to a convenience store that is open 24X7, if the customer cannot be home to receive the goods. This feature avoids the problems related to failed deliveries. It also provides for notification of the customer when the goods shipped by a retailer are received by the designated convenience store. No association of items ordered from a plurality of merchants is required or contemplated in this case.

Accordingly, the above recited limitation is not shown or even suggested in the cited art.

Claim 1 also recites, "for each consumer, based at least on the association of the items on the computer system, physically aggregating the items at the location." In the office action, the examiner has not addressed this limitation in its entirety. Instead, the examiner addresses the excerpt "for each consumer physically aggregating the items at the location." Relying upon this excerpt, the examiner takes the position that this limitation is disclosed by Yamada (patent number 6,336,100), in view of Netship (reference U) in reliance upon pages 1 and 2 of the last reference: "Decentralizing the Online Market" by Bernard P. Markowicz, Traffic World, November 29, 1999.

However, Applicant can find no references or implications in the above cited references that disclose the above recited limitations. The noun "aggregation" and the verb "aggregate" or any of its derivatives are not used anywhere by Yamada. What Yamada describes is a method whereby the consumer is notified when goods shipped by one retailer arrive at the designated convenience store without any indication when the remaining goods will arrive. This information is insufficient for the consumer to decide whether to make a trip to pickup the available items or to wait until all the ordered goods arrive to avoid multiple trips.

With respect to Markowicz's article (reference U), this reference contemplates a distributed inventory system whereby the inventory is pre-positioned in regional warehouses in accordance with the anticipated consumption in each region. It suggests "Netship" in combination with "Parcel Plus" as a possible implementation of distributed inventory. Although distributed inventory represents an improvement over centralized inventory, it would be physically

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and economically impossible for each Parcel Plus location to have sufficient pre-positioned inventory to fulfill orders for all the potential items a consumer may order. Clearly, the collective of all conventional retailers in a given metropolitan area, with millions of square feet of inventory space, cannot comply with such requirement and often consumers are forced to order items from a remote merchant or otherwise forgo the purchase of such items. Therefore, it would be impossible for a single Parcel Plus location to satisfy fulfillment requirements for all possible items that can be purchased in this country. The cited reference describes the problems associated with both centralized and distributed inventory but provides no solution.

In practice, each "Parcel Plus" location will only be able to partially fulfill customer's orders for the items for which they have pre-positioned inventory and some items may not be available in any of the local "Parcel Plus" locations. In general, customers would be forced to travel to multiple "Parcel Plus" locations to try to fulfill all the orders placed. However, this is essentially what consumers do today with the conventional retailers, indicating that the suggested alternative is not a solution. The problem described by the cited reference has been well known for over a decade as "The last mile problem" for which no viable solution thereto has been deployed to date.

Since all the limitations of claim 1, have not been shown in the cited references, Applicant respectfully submits that Claim 1 is not obvious in view of the cited references. Claims 2-4, 6, 18, and 19 depend on Claim 1 and should likewise be allowed for at least the reasons set forth above with respect to Claim 1. These dependent claims also recite additional patentable distinctions over the cited art.

#### **As to Independent Claim 7**

Independent Claim 7 has been amended to recite, "at the geographic location selected by the consumer, aggregating the items sent by each of the merchants." This limitation is similar to the excerpt of the limitation of Claim 1 upon which the examiner relied to address the issue of "Order Aggregation" in Claim 1. In the office action, the examiner addressed independent Claims 1 and 7 together and rejected both claims as being unpatentable over Yamada (patent number 6,336,100), in view of Netship (PTO-892, Item: U). Therefore, Applicant's remarks in connection with "Order Aggregation" in Claim 1 are also applicable to Claim 7 and Applicant respectfully submits that Claim 7, as presently amended, has not been shown obvious by the cited references. Claims 8-14, 16, and 17 depend on Claim 7 and should likewise be allowed for at

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least the reasons set forth above with respect to Claim 7. These dependent claims also recite additional patentable distinctions over the cited art.

CONCLUSION

In view of the foregoing remarks, Applicant submits that the application is in condition for allowance. If, however, issues remain which can potentially be resolved by telephone, the Examiner is invited to call the Applicant at his direct dial number of (408) 730-0110.

Respectfully submitted,

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